

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

April 16, 2014 at 10:00 a.m.

1. [14-21501](#)-E-13 SALVADOR CORTEZ MOTION TO DISMISS CASE
DPC-1 3-13-14 [[21](#)]
CASE DISMISSED 3/26/14

Final Ruling: The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been previously dismissed.

April 16, 2014 at 10:00 a.m.

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2. [10-53003-E-13](#) SCOTT/ANA PANNETTA
DPC-1 Sarah Litchney

MOTION TO DISMISS CASE
2-27-14 [[53](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on February 27, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Delinquent

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,011.00 delinquent in plan payments, which represents multiple months of the \$345.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

3. [13-34303-E-13](#) RAYMOND CLIFFORD AND
RHONDA WILSON

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-12-14 [[62](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$1.00 due on March 7, 2014). The court docket reflects that on March 25, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

4. [13-34303-E-13](#) RAYMOND CLIFFORD AND MOTION TO DISMISS CASE
NLE-1 RHONDA WILSON 3-28-14 [[64](#)]
David Ndudim

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on March 28, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquent

The Trustee seeks dismissal of the case on the basis that the Debtor is \$161.00 delinquent in plan payments, which represents a default in a portion of the required \$245.00 monthly plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to confirm plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 25, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Causes exist to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

5. [14-20204-E-13](#) GARY HALL MOTION TO DISMISS CASE
NLE-2 Pro Se 3-19-14 [[27](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on March 19, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Dismiss is granted and the case is dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquent

The Trustee seeks dismissal of the case on the basis that the Debtor is \$250.00 delinquent in plan payments, which represents multiple months of the \$250.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to provide tax returns

The Trustee also argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Causes exist to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

6. [13-35107](#)-E-13 FERNANDO RODRIGUEZ MOTION TO DISMISS CASE
TSB-1 Peter Lago 3-14-14 [[48](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 14, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Failure to confirm plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 4, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

7. [14-20909-E-13](#) **BERENYZE MENDOZA AND** **MOTION TO DISMISS CASE**
NLE-2 **SERGIO VALDOVINOS** **3-19-14 [37]**
Michael O'Dowd Hays

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on March 19, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to xxxx the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Failure to appear at 341 meeting

The Chapter 13 Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on March 13, 2014. The meeting has been continued to April 10, 2014 at 10:30 A.M. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Debtors' response

In Debtors' response, Debtors' attorney claims that he had previously advised the Trustee of Debtors' inability to attend the 341 meeting on March 13, 2014. Debtors could not attend the meeting because they were traveling to Mexico to visit Debtor Mr. Valdovinos' minor daughter. Debtors have since returned and intend to attend the continued hearing on April 10, 2014.

At the hearing, xxxx.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is xxxx.

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|----|---|---|
| 8. | 13-35314-E-13 BORIS/ZINAIDA MURZAK
Mark Shmorgon | ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-10-14 [43] |
|----|---|---|

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on March 3, 2014). The court docket reflects that on March 11, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

9. [13-35016-E-13](#) **NAMATH KANDAHARI** **MOTION TO DISMISS CASE**
TSB-3 **Timothy J. Walsh** **4-2-14 [59]**

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 2, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquent

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,000.00 delinquent in plan payments, which represents multiple months of the \$1,000.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to confirm plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to

Debtor's prior plan on February 25, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Causes exist to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

10. [09-39917-E-13](#) KIM IANNUCCI MOTION TO DISMISS CASE
DPC-1 Gerald B. Glazer 3-18-14 [[42](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the

Bankruptcy Case is dismissed without prejudice.

11. [09-30220-E-13](#) KURT KRAMER CONTINUED MOTION TO DISMISS
NLE-2 Peter G. Macaluso CASE
3-4-14 [[135](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 4, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. Opposition was stated at the March 19, 2014 Hearing.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers

The court's decision is to grant the Motion to Dismiss and dismiss the case.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

The Chapter 13 Trustee filed the present motion to dismiss, asserting very serious grounds relating to the Debtor's post-petition conduct concerning property of the bankruptcy estate. In addition to being grounds to convert or dismiss the case, the post-petition diversion of assets raises serious issues relating to the Debtor's post-petition fiduciary duty to the estate.

Material default by Debtor with respect to a term of the confirmed plan

In his motion, the Chapter 13 Trustee ("Trustee") alleges that Debtor has sold a Link-Belt Excavator on September 11, 2012 for \$36,000.00 without permission of the court. Debtor's Chapter 13 Plan specifically states in § VI. Miscellaneous Provisions, 6.02 that Debtor is prohibited from disposing any personal or real property with a value of \$1,000.00 or more without first obtaining court authorization. Dckt. 71. This is material default by Debtor with respect to a term of a confirmed plan. 11 U.S.C. § 1307(c)(6).

CONTINUANCE

The court continued the hearing to allow the Debtor to file and serve Opposition and supporting evidence on or before April 4, 2014, and the

Trustee shall file and serve a Reply, if any, on or before April 11, 2014.

DEBTOR'S OPPOSITION

Debtor opposes the Motion to Dismiss on the basis that he was mistaken in the belief that upon confirmation the property of the Debtor re-vests and that this sale was in the normal course of his business. Debtor states that the funds were used to continue earning a gross income sufficient to allow the monthly payments to be generated to the Trustee and to supply "seed" money for future projects.

Debtor offers a declaration in support of the opposition which states business was slow and the income he was receiving was not enough to continue to pay the Trustee. Debtor would the piece of equipment, which was not being used regularly, to pay the Trustee the \$4,000 payment.

Debtor states that over the last 58 months he has paid approximately \$230,000.00 to the Trustee. Debtor has provided unauthenticated exhibits, including a Profit and Loss Statement and bank statement for an unidentified account number for Debtor.

TRUSTEE'S RESPONSE

Trustee argues that Debtor has provided unauthenticated exhibits, which may not have any evidentiary value. However, the Trustee provides an analysis of the profit and loss statement:

The Annual shows \$72,541.20 on Total Income not including the sale of equipment, with expenses totaled at \$94,386.28 including the \$32,000.00 of bankruptcy payments made. According the Annual, the Debtor's business no longer made a profit of \$4,925.00 as projected in the Debtor's business budget on file with the Court, (DN # 1, Page 36.), but only made \$846.24 profit per month. The Quarterly shows a net loss of \$15,166.10, but shows only one \$4,000.00 bankruptcy payment rather than the \$12,000.00 received. The Quarterly shows a loss of \$6,388.70 per month when adjusted for the bankruptcy payments made; bankruptcy payments of \$4,000.00 were posted by the Trustee on 10/2/2012, 10/31/2012, 12/3/2012, and 1/3/2013.

The monthly forms show that in September 2012, the Debtor sold the equipment, paid \$4,000 to the Trustee, and put \$5,788.87 into the business; in October 2012, the Debtor shows \$8,129.55 put into the business, and does not show any bankruptcy plan payment; in November 2012, the Debtor shows paid \$4,000.00 to the Trustee, and \$2,416.91 was put into the business; and in December 2012, the Debtor does not show any bankruptcy plan payments, and \$619.64 was put into the business.

Trustee argues that the Debtor has breached the plan and has put an asset forever out of reach in the event this matter were converted to a Chapter 7. Trustee argues this breach is significant because it has not been adequately addressed and that the evidence provided by the Debtor is

not sufficient. The Trustee believes that dismissal is in the best interest of creditors.

DISCUSSION

The Debtor, safely ensconced in the protective cocoon of bankruptcy has only some very basic obligations. These include following the Bankruptcy Code and not violating his fiduciary duty with the property of the bankruptcy estate (when, as in this case, property is not revested in the debtor) and property of the plan estate (when property is revested in the debtor). Here, the Debtor has been alleged by the Trustee to have converted \$36,000.00 of bankruptcy estate assets.

Post-petition diversion of assets raises serious civil and criminal issues for a fiduciary of the estate. These can run from simple tort claims which the estate has against the fiduciary, denial of discharge (11 U.S.C. § 727(a)(2)(A), (3)), to commission of a bankruptcy crime (18 U.S.C. §§ 152, 3284).

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the general "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Here, Debtor has not provided sufficient evidence to explain the sale of the property of the estate without court permission.

The Debtor's explanation is also very, very troubling. Under penalty of perjury the Debtor states that beginning in 2012 his income dropped and he was not generating sufficient monies to fund the Plan. However, rather than coming to court in good faith to modify the plan, he began surreptitiously liquidating assets to create the illusion that he was performing the plan.

While the Debtor now, after the fact, caught red-handed states that "I did not try to hide it as I thought this was part of doing business,"

that testimony is not credible. Declaration, Dckt. 148. The Debtor is and has been represented by knowledgeable bankruptcy counsel. The court will not presume that the Debtor was not advised on his post-confirmation obligations and not to liquidate assets.

The Debtor also testifies that "paying the Trustee \$4,000.00 every month has been a continuous struggle." *Id.* Thus, it appears that the Plan itself may have been ill-conceived and not based upon correct or accurate financial information.

Only when the Trustee ferreted out that assets were being liquidated to allegedly fund the plan, has the Debtor come forward. It is as if the Debtor and counsel treated the situation as "confirm and forget," with the Debtor being allowed to proceed and do whatever he wants, the Chapter 13 Plan being a "mere formality" which really doesn't mean anything.

It is also significant that upon discovering the liquidation of assets the Trustee contacted counsel for the Debtor. The Trustee sent a letter on January 14, 2014 to counsel requesting information about the liquidation of the asset and the proceeds of the sale. Exhibit B. Dckt. 137. As of the March 4, 2014 declaration of Jennifer Hand (Chapter 13 Trustee's office), the Debtor and his counsel had failed to respond to the letter. This is inconsistent with the Debtor's protestations that he didn't "intend" to do anything wrong.

In looking at the Debtor's plan, dismissal of this case has little negative economic consequences. The Plan payments by the Debtors have all gone to pay his nondischargeable taxes and personal property which he desires to keep. First Amended Chapter 13 Plan, Dckt. 71. He would have to pay these creditors even without a bankruptcy case to keep the personal property and prevent the taxing agencies from seizing his assets. Under the Plan, the Debtor has been able to lower the interest payments and actually retain possession for less than if he was not in the bankruptcy case.

Based on the totality of the circumstances, cause exists pursuant to 11 U.S.C. § 1307(c) to dismiss or convert this case to one under Chapter 7. In many respects it may be in the best interests of creditors for a Chapter 7 trustee to investigate what has really happened in this case and what other assets have been "disposed of" by the Debtor.

Further, it could well be in the best interests of creditors that a Chapter 7 Trustee and the U.S. Trustee's Office, and all creditors be afforded the opportunity to, review the conduct of the Debtor and consider whether he should be allowed to obtain a discharge, his discharge should be denied, the case should be dismissed, or the case should be dismissed with prejudice.

However, the court concludes that it is in the best interests of the estate, creditors, and the Debtor to dismiss this case rather than convert it to one under Chapter 7. The Debtor has some type of business he is trying to protect - though he has testified that he cannot do that under the Plan which was confirmed in this case. Though the Debtor did not seek to modify the plan in this case so that it realistically could be performed, it could be possible that a plan, in a new case, might be presented and performed.

The court will give the Debtor that opportunity to proceed in a new case, rather than forcing the liquidation of his business.

Cause exists under 11 U.S.C. § 1307 to dismiss this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and the court determining that dismissal of the case is in the best interests of the creditors, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is granted and the case is dismissed.

12. [13-35420](#)-E-13 LATASHIA RICHARDSON ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
3-10-14 [[38](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on March 5, 2014). The court docket reflects that on March 18, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

13. [13-35420-E-13](#) LATASHIA RICHARDSON MOTION TO DISMISS CASE
NLE-1 Richard L. Jare 3-19-14 [[40](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on March 28, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Failure to notice new amended plan

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

15. [14-21728](#)-E-13 NETANE VILINGIA
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-31-14 [[21](#)]**

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on March 26, 2014). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

16. [13-35430-E-13](#) CLINTON OLSON
TSB-1 Mary D. Anderson

MOTION TO DISMISS CASE
3-4-14 [[27](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 4, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Delinquent

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,183.00 delinquent in plan payments, which represents multiple months of the \$4,183.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to confirm plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 25, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

17. [08-35031-E-13](#) FERRIC/STACY COLLONS CONTINUED MOTION TO DISMISS
DPC-15 Peter G. Macaluso CASE
1-17-14 [[121](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 17, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$960.00 delinquent in plan payments, which represents multiple months of the \$320.00 plan payment. The Trustee states that the last payment received on October 1, 2013. By the Trustee's calculation the Plan requires a total of \$21,270.00 in plan payments, with only \$20,310.00 having been paid by the Debtors. This is how the Trustee computes a \$960.00 delinquency, three monthly payments of \$320.00 each. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

Debtor's counsel filed an opposition to the motion arguing that there remains only a \$684.71 remains under the plan. Counsel does not state

how he computes a slightly lower arrearage. Debtor's counsel requests a 30 day continuance in order to get in touch with the Debtors as counsel no longer has current phone numbers for the Debtors.

This bankruptcy case was filed on October 17, 2008. The Debtors have slogged through 57 of the 60 required monthly plan payments. The plan has been 95.5% funded. The Debtors, and their counsel, get the benefit of the doubt in these circumstances.

The court continues the hearing to 10:00 a.m. on April 16, 2014. On or before February 24, 2014, counsel for the Debtors shall file with the court a certificate of service for written correspondence which he has sent to the Debtors advising them of the consequence of failing to complete the plan payments, amending the plan, or seeking a hardship discharge. The court does not want a copy of the correspondence, but a certificate that such written correspondence has been sent to the Debtors.

The court continued the hearing to allow the Debtors and counsel to cure the arrearage, file and have set for hearing a motion to modify the plan (which requires only a 35 day notice), or provide evidence that no default exists.

No Motion to Modify or Further Pleadings

Nothing has been filed by Debtors to date. No evidence of a cure or a modified plan and motion to confirm.

Cause exists to dismiss this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

18. [10-39147-E-13](#) TIMOTHY/DASHA MOORE
DPC-1 Timothy J. Walsh

NOTICE OF DEFAULT AND MOTION TO
DISMISS CASE
2-14-14 [[68](#)]

Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 16, 2014. By the court's calculation, 59 days' notice was provided.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee filed a Notice of Default and Application to Dismiss the Case because Debtors have failed to make all payments due under the plan. As of February 13, 2014, payments were delinquent in the amount of \$3,500.00. An additional payment of \$1,750.00 will become due on February 25, 2014. Therefore, a total amount of \$5,250 became due within 30 days from the date of the service of the Notice, on March 16, 2014. In the Application, the Trustee includes a record of payments received from Debtors, reflecting that no payments have been made since December 20, 2013. Dckt. No. 68.

RESPONSE OF DEBTORS TO NOTICE OF DEFAULT

Debtors oppose the Trustee's Application to Dismiss. Debtors acknowledge they are behind in the payments, but state that they are in the process of filing an amended plan, if necessary, or are trying to make payments to the trustee. Debtors have paid in over \$70,000 during the three years the plan has been in effect, and request a hearing.

Upon a review of the docket on April 14, 2014, the Debtors have filed a Modified Plan or a motion to confirm a modified plan. Debtors have not presented evidence that they are now current on their plan payments.

Debtors having defaulted on the payments due under the confirmed plan, not having cured the defaults, and not having filed and sought confirmation of a modified plan, the motion is granted.

Cause exists to dismiss the case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by

the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

19. [13-33049](#)-E-13 JEANNE CHRISTENSON MOTION TO DISMISS CASE
NLE-2 Aaron C. Koenig 3-19-14 [[57](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 19, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance is required.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan. The case was filed on October 7, 2013, and Debtor has yet to confirm a new plan. Debtor's Motion to Confirm Amended Plan, JT-2, was heard and denied on February 11, 2014, and Debtor has failed to amend the Plan and set a confirmation hearing date. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan.

Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

20. [14-20849](#)-E-13 JERRY JORS ORDER TO SHOW CAUSE - FAILURE
Mark A. Wolff TO PAY FEES
3-6-14 [[27](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on March 3, 2014). The court docket reflects that on March 11, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

21. [09-31351-E-13](#) AERON WALLACE
DPC-5 W. Scott de Bie

MOTION TO DISMISS CASE
2-27-14 [[89](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 27, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Dismiss is granted and the case is dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,138.70 delinquent in plan payments, which represents multiple months of missed plan payments. To date, Debtor has paid a total of \$28,648.41, with the last payment received on December 30, 2013. Trustee shows a total of \$32,788.11 is due; Debtor is delinquent \$4,138.70 in plan payments. Debtor's monthly payment is \$830.00. Prior to the hearing on this matter, another payment of \$830.00 will come due. As a result, Debtor will need to pay \$4,968.70 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

In the Application, the Trustee includes a record of payments received from Debtor, reflecting that no payments have been made since December 30, 2013. Dckt. No. 89.

Debtor having defaulted in the payments due under the Plan in this case, the defaults not having been cured, and the Debtor not filing and seeking to confirm a modified plan, the Motion is granted. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

22. [09-41351](#)-E-13 DINA CLARK MOTION TO DISMISS CASE
DPC-2 Peter G. Macaluso 3-14-14 [[59](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 14, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to ~~xxxx~~ the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$603.00 delinquent in plan payments. To date, Debtor has paid a total of \$12,317.00, with the last payment received on January 23, 2014. Trustee shows a total of \$12,920.00 is due, so that Debtor is delinquent \$603.00 in plan payments. Debtor's monthly payment is \$250.00. Prior to the hearing on this matter, another payment of \$250.00 will become due. As a result, Debtor will need to pay \$853.00, in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

In the Application, the Trustee includes a record of payments received from Debtor, reflecting that no payments have been made by Debtor

since January 23, 2013. Dckt. No. 59.

Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Cause exists to dismiss this case.

OPPOSITION BY DEBTOR

Debtor responds by stating that she will be current on or before the hearing. Dckt. No. 63. A review of the court docket shows that Debtor has not filed any evidence indicating that she is current in her plan payments.

APRIL 16, 2014 HEARING

The Debtor's opposition is unsupported by any evidence. Counsel merely argues that the Debtor will be current before the hearing. There is no testimony as to why the Debtor has defaulted on the plan payments. There is no testimony as to why future defaults will not occur. There is no testimony as to how the Debtor, who is already paying all of her projected disposable income into the Plan at the rate of \$250.00 a month, can come up with at least \$853.00 in one month to cure the arrearage and make the then current monthly payment.

The unsupported contention that the Debtor has an "extra" \$603.00 lying around is not credible. It raises more issues than it addresses. Quite possibly the Debtor's prior statements under penalty of perjury are not true and correct, with the Debtor actually having \$853.00 a month to fund the a Chapter 13 Plan.

On April 14, 2014, the Chapter 13 Trustee filed a "Notice of Withdrawal" of the contested motion to dismiss. However, no explanation is provided as to how or why the Debtor has the extra money to cure the arrearage.

At the hearing, XXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is XXXXX.

23. [12-34967-E-13](#) ROBERTA CURTIS MOTION TO DISMISS CASE
DPC-3 Peter G. Macaluso 3-14-14 [[109](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 14, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to xxxx the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is delinquent \$1,785.00 in plan payments. To date, the Debtor has paid a total of \$11,465.00, with the last payment received on February 27, 2014. Trustee shows a total of \$13,250.00 is due, so the Debtor is delinquent \$1,785.00 in plan payments. Debtor's monthly payment is \$475.00. Prior to the hearing on this matter, another payment of \$475.00 will come due. As a result, Debtor will need to pay \$2,260.00 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

In the Application, the Trustee includes a record of payments received from Debtor, reflecting that no payments have been made by Debtor since January 30, 2013. Dckt. No. 109.

Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Cause exists to dismiss this case.

OPPOSITION BY DEBTOR

Debtor responds by stating that she will file a new plan or before the hearing. Dckt. No. 113. A review of the court docket shows, however, that Debtor has not filed any evidence indicating that she is current in her plan payments. No Modified Plan has been proposed and filed.

APRIL 16, 2014 HEARING

At the hearing, XXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is XXXXX.

24. [14-21567](#)-E-13 DEAN DOMACH ORDER TO SHOW CAUSE - FAILURE
C. Anthony Hughes TO PAY FEES
3-27-14 [[20](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on March 24, 2014). The court docket reflects that on April 3, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

25. [14-21568-E-13](#) CHERYL HILL
TSB-1 D. Randall Ensminger

MOTION TO DISMISS CASE
3-13-14 [[16](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 13, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion, and transfer the case to the United States Bankruptcy Court for the Northern District of California, San Jose Division. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee argues that Debtor is causing unreasonable delay that is prejudicial to creditors, as it appears that Debtor incorrectly filed her Chapter 13 bankruptcy case in this court.

28 U.S.C. §§ 84 and 108 set forth which counties fall within the each District of California, and the proper venue for a case under Title 11. According to the petition, Debtor's street address, 3261 Irlanda Way, San Jose, California 95124, it appears that Debtor's residence is located in Santa Clara County, which falls within the Northern District of California under 28 U.S.C. § 84.

RESPONSE BY DEBTOR

Debtor requests that the matter not be dismissed, but rather be transferred to the United States Bankruptcy Court for the Northern District of California, San Jose Division. The reason for this requested transfer is that the case was misfiled in the Eastern District, despite the fact that Debtor resides in San Jose, because Debtor's counsel's Best Case Software had not been updated for ECF filing in the Northern District.

As a result, the emergency skeleton bankruptcy filing that Debtor needed to file the morning of a pending real estate foreclosure "could not be done in time," and therefore the case was filed in the Eastern District. Debtor states that all of the additional documents that were due within 14 days of the skeleton filing were filed on a timely basis, and no Meeting of Creditors has yet been conducted.

Pursuant to 28 U.S.C. § 1412 a bankruptcy court may be transferred to the court in another district in the interests of justice or for the convenience of the parties. Here, the case was clearly filed in the incorrect district. When this court checked Northern District Pacer, no recently filed bankruptcy cases appeared for this Debtor. This court's records do not disclose any other recently filed cases for this Debtor.

It appears that the filing in the Eastern District of California occurred by error as argued by Counsel for the Debtor.

To properly provide for the adjudication of the rights of the parties, this court transfers the bankruptcy case to the Northern District of California, San Jose Division.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, the Debtor residing in San Jose, California, counsel for the Debtor representing that the case was filed in the Eastern District of California by error, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the bankruptcy case is transferred to the Northern District of California, the San Jose Division, pursuant to 28 U.S.C. § 1412 and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District, E.D. Cal. Gen Order 182, 223.

26. [09-25069-E-13](#) CURTIS/CAROLYN O'NEIL
DPC-1 Mark A. Wolff

MOTION TO DISMISS CASE
3-13-14 [[34](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

27. [13-30969-E-13](#) GENE TOWNSEND
NLE-2 Eamonn Foster

MOTION TO DISMISS CASE
3-28-14 [[48](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 28, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan. The case was filed on August 20, 2013, and Debtor has yet to confirm a Plan. The Trustee's Objection to Confirmation, NLE-1, was heard and sustained on January 28, 2014. Debtor has failed to amend the Plan and set a confirmation hearing to date. Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

28. [13-35369](#)-E-13 VASILIOS TSIGARIS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-10-14 [[41](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on March 4, 2014). The court docket reflects that on March 19, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

29. [13-35369-E-13](#) VASILIOS TSIGARIS
NLE-1 Marc A. Caraska

MOTION TO DISMISS CASE
3-28-14 [[48](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 28, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee asserts that the Debtor is causing unreasonable delay that is prejudicial to creditors for two reasons.

First, Debtor is delinquent in \$2,242.59 in plan payments to Trustee to date, and the next scheduled payment of \$2,387.61 is due on April 25, 2014. The case was filed on December 4, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$4,920.24 into the Plan to date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1)

Second, the case was filed on December 4, 2013, and Debtor has yet to confirm a Plan. The Trustee's Objection to Confirmation, TSB-1, was heard and sustained on February 25, 2014, and Debtor has failed to amend the Plan and set a confirmation hearing to date. Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

30. 13-25076-E-13 KEITH SCHILLING MOTION TO DISMISS CASE
NLE-1 Brandon Scott Johnston 3-28-14 [[71](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 28, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee asserts that the Debtor is causing unreasonable delay that is prejudicial to creditors for two reasons.

First, Debtor is \$3,700.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$3,600.00 is due on April 25, 2014. The case was filed on April 13, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$35,900.00 into the Plan to date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1)

Second, the case was filed on April 13, 2013, and Debtor has yet to confirm a Plan. Debtor entered into a Stipulation, filed on December 11, 2013, that provided that the USAA Federal Savings Bank, would be considered the holder and owner of a modified secured claim pursuant to its promissory note and second deed of trust in the sum of \$65,000.00. Dckt. No. 64. The parties agreed that in the event that the Debtor fails to pay-off the entire \$65,000.00, USAA Federal Savings Bank shall be entitled to enforce the full balance of its lien as provided for pursuant to the underlying promissory note, less any credits for monies paid to USAA Federal Savings Bank since the Debtor filed his bankruptcy petition.

The stipulation states that the Debtor agrees to amend the Chapter 13 Plan if necessary to ensure that the Plan conforms with the terms of the stipulation. However, the Debtor has failed to amend the Plan and set a confirmation hearing date for a proposed amended plan. Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

31. [13-32177-E-13](#) DARSHAN SINGH
TSB-1 James L. Brunello

MOTION TO DISMISS CASE
3-14-14 [[51](#)]

Local Rule 9014-1(f)(1) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 14, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Trustee asserts that the Debtor is causing unreasonable delay that is prejudicial to creditors for two reasons.

First, Debtor is delinquent in Debtor is \$762.00 delinquent in plan payments to Trustee to date. The next scheduled payment of \$762.00 is due on March 25, 2014. Debtor has paid \$2,503.00 into the plan to date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, Debtor's Motion to Confirm, JLB-2, was heard and denied on January 28, 2014. To date, Debtor has failed to file an Amended Plan and set it for confirmation. Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

The Trustee asks the court to grant an order dismissing the bankruptcy case, unless Debtor files an serves and amended plan and Motion to Confirm an amended plan, no later than April 2, 2014; be current in plan payments no later than April 2, 2014; and Debtor files a response no later than April 2, 2014, explaining the reason for the delay and explaining why it was reasonable.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

32. 10-20081-E-13 CRYSTAL DIBENEDETTO MOTION TO DISMISS CASE
DPC-3 Peter G. Macaluso 3-14-14 [28]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 14, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to deny the Motion to Dismiss. No appearance at the April 16, 2014 hearing is required.

The Trustee seeks dismissal of the case on the basis that the Debtor is delinquent \$763.00 in plan payments. To date, Debtor has paid a total of \$11,732.00, with the last payment received on December 4, 2013. Trustee's records show that a total of \$12,495.00. According to the Trustee's calculations, the Debtor is delinquent \$763.00 in plan payments. Debtor's monthly payment is \$255.00. Prior to the hearing on this matter, another payment of \$255.00 will come due. As a result, Debtor will need to pay \$1,018.00 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION BY DEBTOR

Debtor responds by stating that she will file a new plan or before the hearing. Dckt. No. 32.

A review of the court docket shows that on April 4, 2014, Debtor filed a Modified Plan, and a Motion to Confirm the Proposed Modified Plan. Dckt. Nos. 34 and 38. The Motion to Confirm the Modified Plan appears to comply with Federal Rule of Bankruptcy Procedure 9013. The Declaration in support appears to provide the court with personal knowledge testimony, which is supported by the Exhibits, including updating the Debtor's expense information.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied.

33. [12-34482-E-13](#) PETER BOWLING AND MARILYN MOTION TO DISMISS CASE
NLE-1 MOWRY 3-26-14 [[241](#)]
Len ReidReynoso

Local Rule 9014-1(f)(2) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on March 26, 2014. By the court's calculation, 21 days' notice was provided. 14 days' notice is required. That requirement was met.

Final Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to continue the Motion to Dismiss to 1:30 p.m. on April 22, 2014. No appearance at the April 16, 2014 hearing is required.

Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307 on multiple grounds.

First, Debtors are currently delinquent more than \$6,000.00 under the terms of the confirmed plan. Debtor has paid a total of \$22,250.00 to the Trustee, with the last payment received on December 9, 2013. The confirmed Plan, Dckt. No. 164, in Section 1.02, called for the proposed sale of real property located at 11905 Borden Road, Herald, California, by January 31, 2014, with the sales proceeds paid to the Trustee. No monies have been received. Debtors will be delinquent \$7,500.00 if the April, 2014 scheduled payment is not received, based on the monthly payment alone. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

Debtors must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, the Trustee reports that Debtors have also filed a subsequent Chapter 12 case, assigned to the Honorable Robert Bardwil, Bankr. E.D. Cal. Case No. 14-22483. It appears that the Debtors filed a Chapter 12 petition, before receiving a discharge under their Chapter 13 case, and before their Chapter 13 Plan has been substantially consummated. Case No. 14-22483.

A comparison of Debtors' petitions, Schedules, Plan, in their Chapter 12 and Chapter 13 cases shows that Debtors are attempting to

discharge the same debts, and that the proceedings cover the same property and assets claimed by Debtors as part of the bankruptcy estate. This is improper; the Debtors cannot have two pending bankruptcy proceedings in which they are seeking discharge of the same obligations. *Freshman v. Atkins*, 269 U.S. 121 (1925). The pendency of an application for discharge in prior bankruptcy proceedings will preclude discharge in a second voluntary proceeding, with respect to the same debts as listed in first proceeding. *Id.* at 123.

The Trustee also notes that "one other significant transfer to Debtor was identified previously in the case." Dckt. No. 237. The Trustee is referring to an opposition entered against Debtors' Objection to Claim, LRR-11. Debtors filed this Objection to a Proof of Claim on the grounds that Debtors' corporation, Oasis Ranch, Inc., is liable for the claim asserted and that the claim is not as personal debt of the Debtors. Dckt. No 231. The Creditor opposed the objection, on the grounds that Oasis Ranch, Inc., is a corporation solely owned by the Debtors, and that a transfer of real estate effected by Debtor Marilyn Mowry (who transferred real property from Oasis Ranch, Inc. to herself) constituted a fraudulent conveyance of the property of the corporation. Dckt. No. 237.

The Trustee asks that the court grant an order dismissing this proceeding, unless the court finds cause to convert the matter to a Chapter 7 under 11 U.S.C. § 1307(c) to convert the case and finds that 11 U.S.C. § 1328(f) does not prevent such a conversion.

ORDER SETTING HEARING ON DEBTORS' MOTION TO DISMISS

On March 31, 2014, the Debtors filed an *ex parte* Motion to Dismiss their Chapter 13 Case. Dckt. No. 247. Upon reviewing the Motion, the court issued an Order Setting Hearing on Request for Dismissal of the Chapter 13 Petition, Dckt. No. 249. The court recognized that the Debtors's confirmed Chapter 13 Plan requires that the 11905 Borden Road Property shall be sold, with a motion to approve the sale and escrow to be opened within 180 days of the confirmed plan (order confirming filed on September 17, 2013). That 180-period expired in March 2014, without a motion to approve sale having been filed.

The court also noted that Debtors have filed a Chapter 12 case, Bankr. E.D. Cal. 14-22483, filed in *pro se*. The court has set a status conference and a hearing on the Debtors' motion to extend time for the filing of the Schedules and Statement of Financial Affairs in the Chapter 12 case for April 22, 2014. The Debtors have not attempted to amend the current Chapter 13 Plan which calls for the prompt sale of the Borden Road Property. The court set a hearing on Debtors' Motion to Dismiss on April 22, 2014, and ordered that the Chapter 13 Trustee, U.S. Trustee, Creditors, the Debtors, and any other parties in interest may file pleadings addressing whether it is proper and in the best interests of the Estate to dismiss this Chapter 13 case or if it should be converted to one under Chapter 7 to allow a Trustee to fulfill the substance of the obligations of the Debtor under the Chapter 13 Plan for the orderly marketing and sale of the Borden Road Property. Order, Dckt. No. 249.

The court's decision is to continue the hearing on Trustee's Motion to Dismiss the Chapter 13 case to April 22, 2014, so that the instant matter

may be heard in conjunction with the hearing on Debtors' Motion to Dismiss.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is continued to 1:30 p.m. on April 22, 2014.

34. 14-20187-E-13 JOANNA FRITTER MOTION TO DISMISS CASE
TSB-1 Gary H. Gale 4-1-14 [47]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 1, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,328.00 delinquent in plan payments to date. The next scheduled payment of \$2,164.00 is due on April 25, 2014. The case was filed on January 9, 2014. The Debtor has paid \$0.00 into the Plan to date. Failure

to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

35. [13-35492](#)-E-13 VERONICA WHEELER ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
3-14-14 [[26](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on March 10, 2014). The court docket reflects that on April 1, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

36. [08-24574](#)-E-13 EARL/CATHERINE BROWN REQUEST FOR ENTRY OF DEFAULT OF
[14-2029](#) CHASE HOME FINANCE, LLC
BROWN ET AL V. CHASE HOME 3-28-14 [[13](#)]
FINANCE, LLC

Notice Provided: The Order Setting Hearing on Request for Entry of Default was served by the Clerk of the Court through the Bankruptcy Noticing Center on Plaintiffs on April 4, 2014. 12 days notice of the hearing was provided.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

April 16, 2014 Hearing

The court set the hearing on the Request for Entry of Default because it does not appear that the named defendant is a legally existing entity for which there is a claim or controversy which can be adjudicated by a federal court. U.S. Constitution Article III, Section 2.

The court notes that JPMorgan Chase Bank, N.A. has filed a motion for extension of time to answer the Complaint. JPMorgan Chase Bank, N.A. is not a named defendant. Neither Plaintiff nor JPMorgan Chase Bank, N.A. have requested that JPMorgan Chase Bank, N.A. be substituted in as the real party in interest pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 25.

At the hearing xxxxxx.

Review of Adversary Proceeding and Parties

Plaintiffs Earl and Catherine Brown filed a Request for Entry of Default on March 28, 2014. Dckt. 13. Plaintiffs name and serve Chase Home Finance, LLC as Defendant. *Id.* In order to issue a default, the Clerk of the Court reviews whether Defendants were properly served by checking the California Secretary of State's database for a verified address. A search of the California Secretary of State's database reveals that Chase Home Finance, LLC's status is listed cancelled. See California Secretary of State, Business Search, <http://kepler.sos.ca.gov/>. This listing also states that the jurisdiction of Chase Home Finance, LLC is Delaware. The Delaware Secretary of State's database requests fees in order to view the status of Chase Home Finance, LLC. See Delaware Secretary of State, Entity Search, <https://delecorp.delaware.gov/tin/GINameSearch.jsp>.

In *Rhodes v. JPMorgan Chase Bank, N.A.*, 2012 U.S. Dist. LEXIS 158988 n1 (S.D. Fla. Nov. 6, 2012) the court noted that Defendant JPMorgan Chase Bank, N.A. stated that it is successor by merger to Chase Home Finance, LLC, doing business as Chase Home Mortgage. Similarly, in *JPMorgan Chase Bank, N.A. v. Romine*, 2013-Ohio-4212 (Ohio Ct. App., Sept. 26, 2013) the court noted that "Chase Home Finance, LLC thereafter merged with [JPMorgan Chase Bank, N.A.]." In *JPMorgan Chase Bank, NA v. Carroll*, 2013-Ohio-5273 (Ohio Ct. App., Dec. 2, 2013) Plaintiff JPMorgan Chase Bank, N.A. filed the affidavit of Michael Brown, JPMorgan Chase Bank, N.A.'s Vice President, in which he stated,

In my capacity as Vice President, I have access to [JPMorgan's] business records, maintained in the ordinary course of regularly conducted business activity, including the business records for and relating to [Glenn Carroll's] loan. These records include the historic records of Chase Home Finance LLC, which merged with [JPMorgan] effective May 1, 2011.

More recently in *Reynolds v. JPMorgan Chase Bank, N.A.*, 2014 U.S. Dist. LEXIS 4503 (M.D. Ga. Jan. 14, 2014), the court noted that "[a]mong the defendants in that case was Chase Home Finance, LLC, which was succeeded by merger with JPMorgan. See, e.g., Doc. 4-4 at 2; *Harris v. Chase Home Finance, LLC*, 524 F. App'x 590, 591 (11th Cir. 2013)."

The Court having reviewed the Request for Entry of Default by Plaintiff, the entity Chase Home Finance, LLC appearing to no longer be a separate legal entity upon which proper service can be made, set this Request for entry of Default of Chase Home Finance, LLC for hearing.